

Case #4217 (08/06/04)

EURO-PRO CORPORATION

Fantom Twister Vacuum Cleaners

Advertising Agency: In-House

Challenger: Dyson, Inc.

- **In any challenge before NAD, it is not how experts define a term or conduct a test, but rather what is the message conveyed to consumers.**
- **An advertiser is obligated to support all reasonable messages conveyed by its advertising, implicit and explicit.**

Basis of Inquiry: Performance claims that appeared in print advertising and an Infomercial by Euro-Pro Corporation ("Euro-Pro") for its Fantom Twister Vacuum ("Fantom") were challenged by the Dyson Company ("Dyson"), a competing manufacturer of vacuum cleaners. Specifically, Dyson challenged the following claims:

Infomercial:

*[Fantom Twister has] "up to 1½ times more suction power
Than other vacuums...[and] advanced three stage filtration
[that] stops what others can't"*

[Fantom Twister has] "1200 Watts of suction power"

Print Advertising:

*"Patented Twister Technology self cleans the filter and
compacts the dust which helps maintain maximum suction power/"*

According to the challenger, the advertiser's claims are false and misleading.

Challenger's Position

The challenger explained that Dyson manufactures quality home appliances, including the Dyson brand vacuum cleaners. According to the challenger, Dyson vacuum cleaners have been sold since 1986, and were introduced into the United States market in 2002. The challenger noted that Dyson vacuum cleaners compete with the Fantom Twister brand vacuum cleaners, which are made and distributed by the advertiser. The challenger argued that Euro-Pro's claims will convey inaccurate messages about: (i) the suction power of the Fantom Twister; (ii) the filtration system of the Fantom Twister vacuum cleaners; and (iii) the wattage of the Fantom Twister as an indicator of higher suction power than other vacuum cleaners.

*[Fantom Twister has] "up to 1½ times more suction power
Than other vacuums"*

According to the challenger, Euro-Pro's claims that its Fantom Twister vacuum cleaner has one and a half times more suction power than other vacuums, implies that the Fantom Twister performs better than all other vacuum cleaners when that is not the case. As support for its position, the challenger submitted internal testing based on the International Electrotechnical

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Commission (“IEC”) standards which indicated that there are a number of comparative upright vacuum cleaners that have more suction power than the Fantom Twister, including products made by Dyson, Sharp, Kenmore and Hoover. Indeed, asserted the challenger, based on its testing, the Fantom Twister operates at 148 air watts less than the Dyson vacuum at zero dust load, and 220 air watts less than the Dyson vacuum at a dust load of slightly over 5 ounces.

Challenger’s Critique of Advertiser’s Testing

The challenger rejected the advertiser’s argument that the American Society for Testing and Materials (“ASTM”) does not have a definition for the term “suction power.” In fact, argued the challenger, the ASTM does define “Suction Power” and uses the measurement “Air Watts.” According to the challenger, the ASTM defines “suction power” as a synonym for “air power,” and air or suction power as:

- (1) in a vacuum cleaner, the net time rate of work performed by an air stream while expending energy to produce an air flow by a vacuum cleaner under specified air resistance conditions.
- (2) a measure of the ability of the air stream to do work. Air power is expressed in terms of air watts.¹

Further, argued the challenger, in addition to having a definition of the term “suction power,” the ASTM also has a standard test to measure suction power. According to the challenger, the ASTM states that air power should be tested using its “Standard Test Method for Measuring Air Performance Characteristics of Vacuum Cleaners.”² According to the challenger, the ASTM specifically states that an “air watt” is the proper method of expressing suction power. In this regard, the challenger noted that the ASTM recommends in its “Standard Practice for Presenting Selected Information on Vacuum Cleaners for Consumer Use” that performance characteristics of a vacuum – in particular, the vacuum’s maximum air (or suction) power – should be expressed in air watts.³ According to the challenger, the advertiser disregarded this test.

Sealed suction vs suction power

The challenger argued further that the advertiser measured sealed suction—i.e., the amount of suction when the end of the vacuum’s air hose is closed. According to the challenger, measuring sealed suction is a relevant component of a test of a vacuum’s suction power, but it is only the first of several tests that must be conducted on a vacuum to determine its suction power capability. Indeed, asserted the challenger, ASTM recognizes that to substantiate claims of suction power, it is not sufficient merely to measure sealed suction. The challenger explained that testers must measure suction when increasingly large openings are placed over the vacuum’s

¹ ASTM Designation F395-03. According to the challenger, the “old” definition of suction contained in ASTM designation F395-00 was superseded by F395-03.

² ASTM Designation F558-03.

³ ASTM Designation F1411-01.

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hose. According to the challenger, at each size, a measurement is taken of suction and air flow, and then these two measurements are used to calculate suction power.⁴

Consumer relevance

The challenged argued further that the ASTM recognizes that its suction power tests do not measure suction power in a real-world, consumer use setting. According to the challenger, consumers will view the unqualified statement “up to 1 ½ times” the power of other vacuums as referring to suction power when the vacuum is being used by consumers. The challenger asserted that the ASTM Standard specifically states that the test results from using the standard “do not indicate the actual air [suction] power present during the cleaning process due to the effects of the various tools in use and surfaces being cleaned.” The challenger noted that while the advertiser should have submitted a test that measured the actual suction power present during a consumer’s cleaning process, the ASTM does not have such a test.

The challenger argued that when, as here, there is no ASTM standard, any test used “should be reliable, accurate, repeatable and reflective of consumer use.”⁵ Moreover, the challenger asserted the challenged claims unqualified product performance claims should be “supported by tests conducted under conditions that mirror those consumers are likely to encounter in everyday use.”⁶ Here, argued the challenger, the advertiser’s test of a vacuum hose submerged in water is hardly reflective of a consumer’s use. Indeed, asserted the challenger, a consumer is likely to believe that references to “suction power” describe the performance of the vacuum as it would be used by consumers. When consumers use a vacuum, it necessarily fills with dust. Accordingly, the challenger argued that the suction power claim must be substantiated by testing conducted as the vacuum fills with dust. Here, the challenger contended, the advertiser failed to submit testing to show that the Fantom Twister vacuum will retain constant suction power as it fills with dust.

*[Fantom Twister] has advanced three stage filtration
[that] stops what others can’t”*

The challenger argued that EuroPro’s claims that its Fantom Twister has “an advanced three-stage filtration system that stops what others can’t,” and that the Fantom Twister Technology “self cleans the filter and compacts the dust which helps maintain maximum suction power” are both misleading and literally false. According to the challenger, the first statement explicitly claims that the Fantom Twister’s filtration system is superior to other vacuum cleaners, implying that it is superior to all other vacuum cleaners, or even the majority of other vacuum cleaners. Additionally, the challenger argued, the second statement implies that the filtration system of the

⁴ The challenger also argued that the advertiser’s reliance on comparative tests of sealed suction for its superior suction power claims is deceptive, as its tests failed to take into account whether or not the compared machines had enabled “bleed valves.” According to the challenger, the advertiser, like many quality vacuums, contain a bleed valve which automatically introduces a leak within the vacuum cleaner when air flow is cut off, so as to prevent motor burnout. Thus, argued the challenger, testing a vacuum at the point of sealed suction will give an inaccurate reading of true suction, because the bleed valve will cause the level of “sealed” suction to drop.

⁵ The Hoover Company, NAD Case Reports #3848 (December 2001).

⁶ *Id.*

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Fantom Twister is superior to all other models of vacuum cleaners. In fact, the challenger asserted, the Fantom Twister filtration is no better (and in many cases is significantly worse) than competitive brands in the market place.

In this regard, the challenger submitted its own internal testing based on IEC's standards for testing dust emissions of vacuum cleaners. According to the challenger, its testing indicated that the Fantom Twister is outperformed by five of the nine tested vacuum cleaners in filtration efficiency. Accordingly, the challenger argued, Fantom Twister's filtration system is not superior to all other vacuum cleaners, or even superior to the majority of other vacuum cleaners.

The challenger rejected the advertiser's argument that the claim was puffery or inherently qualified by the context in which it appears in the advertising – i.e., that its three-stage system and HEPA filters give the Fantom Twister superior filtration ability. According to the challenger, if Euro-Pro intended the claim to convey the message that vacuums with HEPA filters can stop what non-HEPA vacuums cannot, it should not present this claim in a way that can be reasonably interpreted to mean that the Fantom Twister stops what other (HEPA and non-HEPA) vacuums cannot. The challenger maintained that in the absence of any qualifying statements, Euro-Pro must demonstrate that its vacuum performs better than most of its competitors.⁷ The challenger argued that the tests it conducted were designed to measure “the average dust concentration in the exhaust air of a vacuum cleaner.”⁸ Based on its tests, the challenger asserted that under IEC standards, the Fantom Twister's vacuum filtration is, in fact, worse than almost half of the competing vacuums.

*Patented Twister Technology self cleans the filter and compacts
the dust which helps maintain maximum suction power/”*

The challenger argued that the advertiser's claim that its self-cleaning filter helps “maintain maximum suction power” must be evaluated to determine what consumers will reasonably believe it means.⁹ According to the challenger, NAD examines claims involving the term “maximum,” in context to determine whether it is a comparative superiority claim, or one of parity, establishing a level of performance that could not be exceeded by others.¹⁰ The challenged argued that where, as here, there is no defined maximum, consumers are likely to believe that any claim about “maximum suction power” is a comparative claim, particularly when the claim appears with other comparative claims.

⁷ In support of its argument, the challenger cited Amden Corporation, NAD Case Reports No. 4048 (May 2003) (where advertiser made unqualified comparative superiority claim stating that its product “works easier and faster than other at-home bleaching products,” the advertiser must prove its superiority “against most of its competitors” and not just a representative sample of competing products).

⁸ IEC Standard 2.10.

⁹ In support of its assertion, the challenger cited The Oreck Corporation, NAD Case Reports No. 3350 (November 1996).

¹⁰ The challenger cited The Den Mat Corporation, NAD Case Reports No. 3814 (September 2001). The challenger noted that in the Den Matt case, NAD determined that the unqualified claim “maximum whitening” communicated a comparative claim, or at least one of parity, establishing a level of performance that could not be exceeded by others.

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The challenger noted that the advertiser failed to provide any supporting evidence demonstrating the superiority of its vacuum cleaner. In contrast, the challenger contended, its testing indicated that the Fantom Twister's suction power drops dramatically after collecting a minimal dust load. In this regard, the challenger noted that without dust the Fantom Twister has suction power of 150 air watts; however, with only slightly over 5 ounces of dust, its suction power drops to less than 50 air watts.

[Fantom Twister has] "1200 Watts of suction power"

The challenger also maintained that Euro-Pro's use of "wattage" to claim suction power throughout much of its advertising is misleading. According to the challenger, while "air watts" are commonly used internationally to denote peak suction power in vacuum cleaners, "watts" alone merely denotes electrical power. The challenger noted that the two are not directly related, and the use of "watts" or "wattage" is not relevant to the suction or cleaning performance of an individual vacuum cleaner.

Advertiser's Position

The advertiser defended the truthfulness and accuracy of the challenged claims as set forth more specifically below.

*[Fantom Twister has] "up to 1½ times more suction power
Than other vacuums"*

The advertiser explained that the ASTM is the United States based standards organization that has developed the only recognized standards for vacuum cleaners in the United States. In this regard, the advertiser noted that not only are ASTM standards used by vacuum cleaner manufacturers in this country, but references to ASTM standards are routinely included in vacuum cleaner advertisements.

By way of background, the advertiser explained that it began making suction power claims for its vacuums in the year 2000. At that time, noted the advertiser, the term "suction power" was not included in ASTM's "Standard Terminology Relating to Vacuum Cleaners." According to the advertiser, the only definition in the Standard Terminology relevant to suction was the definition for "suction" itself, the definition on which the advertiser has always relied: i.e., "the absolute difference between ambient and sub-atmospheric pressure expressed in millimeters of water."¹¹ The advertiser noted that in January 2003, ASTM published a revised "Standard Terminology Relating to Vacuum Cleaners"¹² that, under the heading "suction power," cross-referenced "air power." The advertiser explained that that version of ASTM's Standard Terminology and the current version of ASTM's Standard Technology continue to include the same definition of "suction" that appeared in the ASTM Standard Terminology when Euro-Pro first made its "suction power" claim. Further, the advertiser noted that notwithstanding the fact

¹¹ The advertiser cited ASTM Report F 395-00 "Standard Terminology Relating to Vacuum Cleaners."

¹² Standard Terminology Relating To Vacuum Cleaners (F395-02).

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that ASTM now includes “suction power” in its Standard Terminology, ASTM continues to use the term “air power” in all of its standards, while “suction power” as a synonym for “air power” remains a term used primarily in Europe.

The advertiser noted that regardless of these rather esoteric distinctions, the question for NAD is whether consumers (not vacuum cleaner engineers) are likely to be misled because the test conducted by Euro-Pro to support its “suction power” claim measures suction, as that term is commonly defined and understood, rather than air power. In this regard, the advertiser explained that in lay terms, suction is the pull that one feels if one places his or her hand over the top of a vacuum cleaner’s hose. The advertiser explained that the amount of suction that a vacuum cleaner creates is an important performance feature.¹³ According to the advertiser, it is indisputable that suction is an integral component of a vacuum cleaner’s ability to lift dirt and dust out of carpets and off hard wood floors. Moreover, asserted the advertiser, suction is also critical to the performance of a vacuum cleaner’s tools (e.g., the performance of a vacuum cleaner hose when pressed against a piece of upholstery).

According to the advertiser, in order to determine “air power” in accordance with current ASTM standards, one must calculate the suction of a vacuum cleaner.¹⁴ The advertiser asserted that the procedures for calculating the suction of a vacuum cleaner pursuant to ASTM standards are precisely the same procedures followed by Euro-Pro in determining the amount of suction generated by its models and those of its competitors.¹⁵ The results of its tests, argued the advertiser, show that the Fantom Twister models have more suction than the vast majority of vacuums on the market and “up to” 1 ½ times the suction of a number of competing vacuums.

The Advertiser’s Testing

The advertiser explained that it has three models of Fantom Twister vacuum cleaners.¹⁶ According to the advertiser, the suction tests it conducted indicated that two of its models have more suction power than every competing model except one manufactured by the challenger;¹⁷ and the third model has more suction power than all but two of the competing models.¹⁸ Moreover, asserted the advertiser, all three models had up to or more than 1 ½ times the suction of a number of the competing models tested. In this regard, the advertiser dismissed the

¹³ In this regard, the advertiser noted that the Ristenbatt Vacuum Cleaner Service website (www.ristenbatt.com) contains helpful descriptions of a number of terms relating to vacuum cleaners. The website notes, “[T]he sealed suction of a vacuum cleaner as rated in inches of water lift is a good indication of how well it will perform, especially when comparing systems with higher resistance to the airflow.”

¹⁴ The advertiser cited Section 1.2 of ASTM F 558-03 which states, “These tests and calculations include determination of suction, airflow, air power, maximum air power, and input power under standard operating conditions...”

¹⁵ The advertiser cited ASTM sections 7.4.4, 7.4.5 and 7.4.5.1 of F558-03.

¹⁶ The advertiser noted that the three models were the FM 760, FM 741 and FM 743. According to the advertiser, the suction tests it conducted show that the FM 760 has 68.3 inches of suction, the FM 741 has 82.47 inches of suction and the FM 743 has 78.57 inches of suction.

¹⁷ According to the advertiser, its Fantom models 741 and 743 have more suction power than every competing model except the Dyson DC07.

¹⁸ The advertiser stated that its model 760 has more suction power than all but two of the competing models.

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challenger's contention that its test sample was inadequate because Euro-Pro did not test enough competing vacuums. According to the advertiser, a test of 21 competing vacuums from a variety of different manufacturers is more than adequate to support a comparison to "other" vacuums.

The advertiser rejected Dyson's argument that its suction claim implies that "the Fantom Twister vacuum cleaner performs better than all other vacuums." According to the advertiser, that is not what the claim states or implies. Indeed, the advertiser contended, suction is only one element (albeit an important one) of the overall performance capability of a vacuum. In this regard, the advertiser explained that other factors that affect the overall performance of a vacuum cleaner, include, for example, the ability to remove embedded dirt from carpets and the ability to remove dust from both hard floors and carpets. The advertiser asserted that when it makes a claim about suction, that claim relates only to suction and nothing more.

Secondly, the advertiser argued, the test conducted by the challenger does not measure suction in the manner that suction is defined by ASTM. According to the advertiser, the IEC standards, upon which the challenger relies, purport to make a distinction between "suction" and "suction power" and purport to equate "suction power" with airflow as measured by air watts. In this regard, the advertiser argued that the challenger failed to provide any evidence that what are allegedly commonly understood terms in Europe or the UK have the same meaning in the United States. To the contrary, contended the advertiser, popular dictionary definitions of "suction" are completely consistent with the tests it conducted and have nothing to do with airflow or air watts.¹⁹ In short, the advertiser argued, the advertiser's test for suction is completely consistent with the commonly understood meaning of that term.

The advertiser rejected the challenger's argument that it was obligated to conduct its suction test in a "real world" environment (by testing the vacuum cleaners over time as they fill with dust) rather than using the test for suction developed by ASTM. According to the advertiser, under the challenger's strained reasoning, automobile manufacturers could not advertise the horsepower of engines based on the standard methodology for determining horsepower because the actual horsepower may depend on how the consumer maintains the engine over time. In this regard, the advertiser noted that the ASTM does not state that the maximum air power information must be based on tests showing the air power of a vacuum cleaner over time as the vacuum becomes increasingly filled with dust. In fact, noted the advertiser, there is no single test that determines "overall cleaning performance" of a vacuum cleaner. Rather, the advertiser explained that there are separate and distinct tests for determining how well a vacuum cleaner will remove embedded dirt from carpets, wood floors, etc.

*{Fantom Twister} has advanced three stage filtration
[that] stops what others can't"*

¹⁹ For example, the "New College Edition of The American Heritage Dictionary" defines "suction" as: "a force that causes fluid or solid to be drawn into an interior space to adhere to a surface because of the difference between the external in internal pressures." Similarly, the advertiser noted, The Merriam-Webster on-line dictionary defines "suction" as: "the act or process of exerting a force upon a solid, liquid, or gaseous body by reason of reduced air pressure over part of its surface."

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The advertiser argued that the infomercial does not contain the phrase, “advanced three stage filtration [that] stops what others can’t.” According to the advertiser, a transcript of the infomercial indicates that the only reference to “stops what others can’t” is contained in the following colloquy concerning the three stage filtration system in the Fantom Twister:

Filter One Stops Large Particles

Filter Two Stops What Other Vacuums Can’t

Filter Three, The True HEPA Filter, Is Trapping Microscopic Particles
So The Air Is Pristine And Clean

The advertiser disputed the Dyson’s contention that the phrase, “stop what other vacuums can’t” explicitly claims that the Fantom Twister’s filtration system is superior to other vacuum cleaners, implying that it is superior to all other vacuum cleaners.” In this regard, the advertiser asserted that the challenger badly overreacted and over-interpreted a few innocuous words in a thirty minute infomercial. According to the advertiser, this kind of non-specific phrase should be viewed as puffing and nothing more.

In any event, the advertiser argued, the claim is truthful. According to the advertiser, there are many vacuum cleaners on the market that do not have a three stage filtration system and that do not have HEPA filters.²⁰ The advertiser contended that there is no question that the Fantom Twister filtration system stops what these “other” vacuums can’t.

The advertiser dismissed the challenger’s testing comparing the filtration efficiency of the Fantom Twister to eight other vacuums and indicating that the Fantom had lower filtration efficiency than five of the eight vacuums tested. According to the advertiser, not even the challenger can purport to claim that five vacuums represent a majority of other vacuum cleaners.

Finally, the advertiser argued, it is difficult to see how a two second statement about the second stage in the three stage filtration system could lead consumers to believe that the Fantom Twister has a better filtration system than any other vacuum. According to the advertiser, as demonstrated in the infomercial, the very nature of a three stage filtration system is that each succeeding stage traps particles that pass through to an earlier stage. The advertiser noted that the stage two filter blocks medium-sized particles. In turn, stated the advertiser, the particles that pass through the stage two filter are then blocked by the HEPA filter. The advertiser argued that a comment about the stage two filter could not possibly cause consumers to believe that the Fantom System has the best filtration system, particularly when the very next line in the infomercial describes another stage in that very system (i.e., the stage three HEPA filter) which filters out the smallest particles.

Patented Twister Technology self cleans the filter and

²⁰ For example, the advertiser noted that the following vacuum cleaners do not have a three stage filtration system and do not have HEPA filters, including, for example, Eureka Models 2270 and 3684; Hoover Models U5453900, U5435900, U5064-940, U5104-900; Oreck Models XL21600, XL3610HH, XL2400RS; Dirt Devil Models 088100, 085540, 85550; Bissell Models 8990 and 3522-1; and Sanyo Model SC-800P.

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Compacts the dust which helps maintain maximum suction power/”

The advertiser explained that the Fantom Twister includes a patented self-cleaning filter system that allows the owner to compact to the bottom of the receptacle dust and other debris that builds up in the filter. The advertiser asserted that this technology is clearly relevant to the ability of the Fantom Twister vacuum cleaner to maintain suction power.

The advertiser argued that, contrary to the challenger’s contention, no reasonable person could interpret the claim that the Fantom’s self cleaning filter helps maintain maximum suction power to mean that the Fantom’s filtration system is superior to all other models of vacuum cleaners in terms of filter efficiency. First, contended the advertiser, the claim is about the relationship between a clean filter and the maintenance of suction power, not “filtration efficiency” which concerns the ability of a filter to remove particles that pass through the vacuum’s cleaner’s filter. Secondly, the advertiser argued the claim does not even reference other vacuum cleaners. According to the advertiser, the maximum suction power to which the claim refers is the Fantom’s own suction power. Thus, reasoned the advertiser, the claim cannot possibly be interpreted as a “superiority” claim.

[Fantom Twister has] “1200 Watts of suction power”

The advertiser advised NAD that this claim was permanently discontinued prior to the commencement of the instant challenge.

Decision

At issue in this advertising review proceeding are several different performance claims for the Fantom Twister vacuum cleaner. For the sake of clarity, NAD grouped the challenged claims under the categories listed below.

*Fantom Twister [has] “up to 1½ times more suction power
than other vacuums*

One of the principal issues in this challenge concerns the advertiser’s use of the term “suction power.” According to the advertiser, “suction power” is synonymous with “suction” which is traditionally defined as the amount of suction or lift when the vacuum’s air hose is closed. The challenger, on the other hand, equates “suction power” with “air power” and argues that to substantiate this claim, the advertiser must submit tests “conducted under conditions that reflect conditions that consumers are likely to encounter in everyday use.”

After carefully reviewing all of the evidence in the record, NAD determined that “suction” and “suction power” are not treated as synonymous by industry standards. Under both IEC and ASTM standards, the term “suction” is a term of art distinct from “suction power” and “air power.” Although the advertiser correctly notes that at one time the ASTM did not distinguish between the two, the ASTM has now revised its definitions and clearly distinguishes between the

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two terms. As the challenger argued and NAD agreed, the revised ASTM designation defines “suction power” as a synonym for “air power.”²¹

Having made this determination, NAD examined the evidence submitted by the advertiser to support its “suction power” claim. The advertiser’s testing was conducted according to the specifications contained in ASTM Standard Test Method for Measuring Air Performance Characteristics of Vacuum cleaners, Sections 7.7.4, 7.7.5 and 7.7.5.1 of F 558 – 03. NAD noted that the advertiser tested 21 competing products including machines manufactured by Bissell, Dyson, Eureka, Hoover, Royal Dirt Devil and Oreck. NAD determined that the representative test sample the advertiser used was sufficient to support an “others” claim.

Turning to the specifics of the tests conducted by the advertiser, NAD noted that ASTM Designation: F 558 – 03 covers procedures for the evaluation of various characteristics of vacuum cleaners; specifically: suction, airflow, air power, maximum air power and input power under standard operating conditions.²² It is undisputed by the parties that the advertiser’s testing involved only the first phase of the ASTM Designation, i.e., those procedures involving the determination of “sealed suction.” As delineated above, NAD has determined that “suction” is distinct under industry standards from “suction power.” Moreover, under the revised ASTM standards, after measuring sealed suction, testers should continue to test by measuring suction with increasingly large openings which are placed over the vacuum’s hose to determine a vacuum’s suction power. The advertiser did not conduct additional testing under the revised ASTM standards to determine “suction power.”

Moreover, as the advertiser noted, the question for NAD is not what the claim means to vacuum engineers, but rather what are the reasonable messages conveyed to consumers. In the absence of any consumer perception evidence in the record, NAD determined consumers could reasonably understand the claim, “the Fantom Twister has up to 1 ½ times more suction power” to mean that Fantom Twister has 1 ½ times more power than competing vacuums, and that in real use and that it cleans better than other vacuums. These messages are not supported by the evidence in the record.²³ Moreover, as the challenger noted, the ASTM itself recognizes, this test is not consumer-relevant for the purpose of showing overall cleaning performance.²⁴

²¹ The ASTM defines air or suction power as:

(1) in a vacuum cleaner, the net time rate of work performed by an air stream while expending energy to produce an airflow by a vacuum cleaner under specified air resistance conditions. (2) a measure of the ability of the air stream to do work. Air is expressed in terms of watts.

ASTM Designation F395-03.

²² ASTM Designation F 558-03 (1.2).

²³ NAD noted that during the pendency of this challenge, the advertiser represented that it would drop the phrase “power,” making solely a “suction” claim. While NAD gratefully appreciated the advertiser’s cooperation in attempting to resolve the matter, NAD also noted that this claim was not before it. Indeed, NAD, as it does in every challenge, would have to examine the claim in the context of the advertising in which it appeared as well as the adequacy of any qualifying disclosures.

²⁴ ASTM Designation: F588-03, Section 1.2.

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For all of the foregoing reasons, NAD recommended that the advertiser discontinue its “up to 1 ½ times more suction power” claim.

*[Fantom Twister] has advanced three stage filtration
[that] stops what others can't”*

While there was some dispute between the parties as to what terminology was actually used in the advertiser's infomercial, NAD observed that the claim “stops what others can't” and “stops what other vacuums can't” were both used in the voiceover as well as in a visual that appeared during the portion of the infomercial when the Fantom Twister's three stage filtration system was described and depicted. The advertiser argued that the phrase, “Stops what others [or other vacuums] can't” as used in the infomercial, is the kind of general and obviously exaggerated claim that constitutes puffery. Additionally, the advertiser argued that the claim is sufficiently qualified in the context in which it appeared, i.e., that its stage 3 HEPA filter stops what the other filters in its system cannot stop. Finally, the advertiser argued that the claim is truthful since many vacuums on the market do not have a three stage filtration system and/or do not have HEPA filters.

After carefully reviewing the claims in the context in which they appeared, NAD determined that consumers could reasonably take away the message that the Fantom Twister filters better than other vacuums. To support this claim, the advertiser would need to demonstrate that its vacuum filters dust and dirt better than most of its competitors. Here, the advertiser submitted no evidence other than its bald assertion that its filtration system is better than other vacuums because many vacuums do not have three filters or a HEPA filter. The challenger, on the other hand, submitted tests designed to measure the average dust concentration in the exhaust air of a vacuum. The challenger's testing, which NAD found persuasive in this regard, indicated that the Fantom Twister was not superior to other vacuums, but rather, was outperformed by five of the nine tested vacuums in filtration efficiency.

NAD acknowledged that the challenged phrases occupied a small percentage of screen time in the overall context of the infomercial and accepts that the advertiser may not have intended to make a superiority claim. However, it is well-established that an advertiser is obligated to support all reasonable messages conveyed by its advertising. Given the lack of supporting evidence in the record, NAD recommended that the advertiser discontinue the claim, “stops what others [other vacuums] can't” or clearly modify the claim to make it clear that the comparison is limited to the non-HEPA filters in its own vacuum.

*Patented Twister Technology “self cleans the filter and
compacts the dust which helps maintain maximum suction power/”*

The challenger argued that the claim Fantom's patented Twister Technology “self-cleans the filter and compacts the dust which helps maintain maximum suction power,” implies that Fantom's filtration system is superior to all other models of vacuum cleaners in terms of filter efficiency. The advertiser explained that the maximum suction power to which the claim refers

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is the Fantom's own suction power. After reviewing the challenged claim in context, NAD agreed. Indeed, as noted by the advertiser, the claim appears in a monadic context without any reference to any other vacuum cleaners.

Additionally, the claim is limited to the relationship between a clean filter and the maintenance of suction capability rather than filtration efficiency. It is undisputed that when dust and debris build up around the filter in a vacuum cleaner, it adversely affects the airflow and suction. The advertiser explained that the Fantom Twister includes a patented self-cleaning filter system that allows the user to compact dust and other debris that builds up in the filter to the bottom of the dust receptacle. NAD believed that this technology is relevant to the ability of the Fantom vacuum cleaner to maintain suction power. As the filter builds up with dust and debris, a consumer is able to twist a crank handle and compact the dust to the bottom of the receptacle, thereby facilitating maintenance of the suction capability of the unit.

NAD determined that this mechanism of action provided a reasonable basis of support for the advertiser's claim that the Fantom Twister's self-cleaning filter helps its vacuum maintain maximum suction power.

Conclusion

NAD determined that the advertiser provided a reasonable basis of support for its claim that the Fantom Twister's self-cleaning filter helps to maintain maximum suction power. However, NAD determined that consumers could reasonably interpret the claim that Fantom Twister has "1½ times more suction power" to mean that it has 1½ times more suction power than competing vacuums, and that it cleans better than other vacuums in real use – a message NAD determined was not supported by the evidence in the record. Consequently, NAD recommended that the advertiser discontinue the claim. Finally, NAD recommended that the advertiser discontinue the claim, "stops what others [other vacuums] can't" or clearly modify the claim to avoid the potential for any consumer confusion by identifying "others" as the Stage 1 and 2 non-HEPA filters in its own Fantom Twister vacuum.

Advertiser's Statement

Euro-Pro appreciates the opportunity to participate in NAD's self-regulatory process. Euro-Pro is pleased with NAD's decision that Euro-Pro's claim that the Fantom's "patented Twister Technology self cleans the filter and compacts the dust which helps maintain maximum suction power" is neither false nor misleading. While Euro-Pro disagrees with NAD's conclusion that "suction" and "suction power" are different concepts in the minds of consumers, Euro-Pro will abide by NAD's recommendation and discontinue making claims about "suction power" that are based on tests for "sealed suction." Euro-Pro respectfully disagrees with NAD's conclusion about the phrase "stops what others can't." Euro-Pro has not used this phrase other than in the single infomercial that aired in 2003, and will not use this phrase in the future without appropriate clarification. (#4217 WJK, closed 08/06/04)